

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

**ERIC DRAKE**

**V.**

**ST. PAUL TRAVELERS  
INSURANCE, et al.**

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**CIVIL ACTION NO. 6:08-CV-301**

**ORDER ADOPTING REPORT AND  
RECOMMENDATION OF MAGISTRATE JUDGE**

The above entitled and numbered civil action was referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. The Report of the Magistrate Judge, which contains his recommendation for the disposition of such action, has been presented for consideration (Doc. No. 86). Plaintiff has filed objections to the Report and Recommendation. (Doc. Nos. 88, 89.) Having carefully considered the objections raised by Plaintiff, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct.

Plaintiff argues that because he has filed a Motion for Evidentiary Hearing he is entitled to present evidence showing that the state court order declaring him a vexatious litigant is erroneous. He also argues that this Court's local rules have prevented him from presenting evidence. As the Magistrate Judge explained, this Federal District Court has no jurisdiction to review an order entered in state court. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). Even if Plaintiff's evidence were incontrovertible, no Federal District Court has the power to alter the order entered by a Texas state court. Plaintiff may seek recourse through the appropriate appellate procedures of the state of Texas. *Liedtke v. State Bar of Tex.*, 18 F.3d 315, 317 (5th Cir. 1994).

Therefore, the Court hereby adopts the Report of the United States Magistrate Judge as the



findings and conclusions of this Court. Accordingly, it is **ORDERED** that Defendants' Motions to Dismiss be **GRANTED**, and that Plaintiff's claims against all defendants be **DISMISSED**. Plaintiff's Motions for Evidentiary Hearings (Doc. Nos. 59, 83) are **DENIED AS MOOT**.

Plaintiff has recently filed a Motion for Default Judgment as to Defendants Joan Bazar and Abbass Sekhavat for failing to answer the Complaint. (Doc. No. 85.) However, these Defendants filed Motions to Dismiss (Doc. Nos. 34, 37) within days of being served. Plaintiff's Motion is **DENIED**.

Defendants Sedgwick, Detert, Morgan & Arnold, Mark Tillman, Liberty Mutual Automotive Insurance Co., Greg Griffith, Martin, Disiere, Jefferson & Wisdom, Levon G Hovatanian, Alice Tatum Andrews, Jessica Settler, and Hartford Insurance Company have also filed Motions for Entry of a Vexatious Litigant Order. (Doc. Nos. 32, 33, 81.) They ask that this Court enter an order prohibiting Plaintiff from bringing any actions against any of the Defendants named in this lawsuit that are based on the same factual allegations. The Court finds that such an order would be inappropriate. Of course, these defendants are not completely without recourse. "[R]es judicata and collateral estoppel are usually more than adequate to protect defendants against repetitious litigation." *See Harrelson*, 613 F.2d at 116. If Plaintiff continues to file lawsuits based on the same facts at issue in this case, Plaintiff may be subject to appropriate sanctions at that time. Accordingly, Defendants' Motions for Entry of a Vexatious Litigant Order are **DENIED**.

**So ORDERED and SIGNED this 26th day of March, 2009.**

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS**  
**UNITED STATES DISTRICT JUDGE**